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Plaintiff Sears Holdings Management
7 Corporation, erroneously sued as Sears
8 Holdings, Inc.

9
10 UNITED STATES DISTRICT COURT
11
12 NORTHERN DISTRICT OF CALIFORNIA

13 BIALLA & ASSOCIATES, INC.,

14 Plaintiff,

15 v.

16 SEARS HOLDINGS, INC. AND DOES 1
17 THROUGH 10, INCLUSIVE,

Defendant.

18 AND RELATED COUNTERCLAIMS.

19 Case No. 08-03529 MMC

20 **STIPULATION AND {PROPOSED}**
21 **ORDER DISMISSING COMPLAINT AND**
22 **COUNTERCLAIMS WITH PREJUDICE**

FENWICK & WEST LLP
ATTORNEYS AT LAW
SAN FRANCISCO

1 Pursuant to the Parties' agreement, Plaintiff and Counterclaim-defendant Bialla &
2 Associates, Inc. ("Bialla"), on the one hand, and Defendants and Counterclaim-plaintiff Sears
3 Holdings Management Corporation, erroneously sued as Sears Holdings, Inc. ("Sears"), on the
4 other hand, by and through their respective counsel of record, hereby stipulate and agree pursuant
5 to Fed. R. Civ. P. 41(a) that the above-captioned action, including all claims and counterclaims
6 therein, is hereby dismissed with prejudice, with each party to bear its own expenses, costs, and
7 attorneys' fees.

8 Dated: December 30, 2008

FENWICK & WEST LLP

10 By: /s/ Jennifer L. Kelly
11 Jennifer L. Kelly

12 Attorneys for Plaintiff and Counterclaim-
13 defendant Bialla & Associates, Inc.

Dated: December 30, 2008

GLYNN & FINLEY LLP

15 By: /s/ Clement L. Glynn
16 Clement L. Glynn

17 Attorneys for Defendant and Counterclaim-
18 plaintiff Sears Holdings Management
Corporation, sued as Sears Holdings, Inc.

ATTESTATION PURSUANT TO GENERAL ORDER 45

I, Jennifer L Kelly, attest that concurrence in the filing of this document has been obtained
from any signatories indicated by a "conformed" signature (/s/) within this e-filed document.

I declare under penalty of perjury under the laws of the United States of America that the
foregoing is true and correct.

Dated: December 30, 2008

FENWICK & WEST LLP

25 By: /s/ Jennifer L. Kelly
26 Jennifer L. Kelly

27 Attorneys for Plaintiff Bialla & Associates, Inc.
28

1 **PROPOSED ORDER DISMISSING COMPLAINT AND**
2 **COUNTERCLAIMS WITH PREJUDICE**

3 The parties having so stipulated, IT IS ORDERED that the above-captioned action,
4 including all claims and counter-claims therein, is hereby dismissed with prejudice, with each
5 party to bear its own expenses, costs, and attorneys' fees.

6 IT IS SO ORDERED.

7 January 5, 2009
8 Dated: December _____, 2008

9 By: 
The Honorable Maxine M. Chesley
United States Magistrate Judge

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SAN FRANCISCO

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